IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6736 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VILAS BALKRISHNA VICHARE

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr.D.N.Patel, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

The respondent no.1 by an order dated 30.7.1999, a copy of which is annexed at Annexure A, passed an order of detention detaining the detenu, the present petitioner under the provisions contained in the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short).

2. The grounds of detention are annexed at Annexure B were served on the detenu. From the grounds of detention, it appears that the detenu was engaged in nefarious activities of dealing in prohibited liquor on one occasion and on another occasion 94 English bottles were seized. The Detaining Authority was satisfied that the detenu is a dangerous person and is dealing illegally in illicit liquor with the help of head strong associates. The detenu and his associates are in the habit of keeping dangerous weapons and are transporting liquor. The detenu and his associates are in habit of using dangerous weapons on innocent persons. The witnesses were so afraid that they were not willing to come forward to give the statement and therefore they gave the statements with a request that the names shall not be disclosed and the names have not been disclosed. From the statement, it appears that the detenu is a person who would take law in his hands and would go to extent of causing injuries to innocent persons. On 7.5.1999, a rickshaw which was passing nearby was stopped and passenger who was in the rickshaw was asked to carry 5 containers of English liquor and on refusal he was beaten. On account of the incident, people collected. The detenu and his associates took out the weapons, as a result of which the persons ran away from the place. There is another incident dated 25.6.99. The third incident is of 13.6.99. The Detaining Authority was satisfied that the detenu is a boot legger and is required to be detained and accordingly passed an order. Before the Court, neither the Detaining Authority nor the State Government has filed affidavit.

3. On behalf of the detenu, in para 8 it is averred as under:-

> "13. The petitioner further submits that, the representation is sent to the detaining authority, dated 12.8.1999, against the impugned order of detention passed against him. it is also requested in the said representation to forward it to the State Government to consider it. But he is not replied. It is delayed for considering the said representation. Therefore, his valuable right under Article 22(5) of the Constitution of India is violated and his continued detention has become illegal."

It is required to be noted that not only the order of detention should be legal and and in accordance

with law but the continued detention should also be in accordance with law. The representation forwarded by the detenu has not been considered. There is no material on the record to indicate that the representation was decided in accordance with the procedure prescribed under the law. Under the circumstances, the continued detention is required to be declared as bad and illegal and accordingly the petition is required to be allowed. The detenu is ordered to be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

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